

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
KANAAN A. MUSA-WALWEEL,
Defendant.

Case No. 6:20-po-00741-HBK-1

ORDER DIRECTING GOVERNMENT TO
NOTIFY COURT WHETHER THEY OBJECT
TO DEFENDANT'S PAYMENT

This matter comes before the Court upon periodic review. On August 17, 2020, Defendant was issued Violation Notice 09910279 for engaging in a permit activity without a permit in violation of Title 36 C.F.R. §1.6(g)(1). (Doc. No. 1). Defendant was assessed \$250.00 as set forth in the Collateral Forfeiture Schedule and a \$30.00 processing fee for a total amount of \$280.00. (*Id.*).

In lieu of forfeiting collateral (\$280.00), Defendant appeared for his initial appearance on February 9, 2021 and entered a not guilty plea. *See Fed. R. Crim. P. 58(d)(1); Doc. No. 4.* Defendant later moved to dismiss the violation notice, which the Court denied following a hearing. (Docs. No. 7, 12, 16). At the hearing, Defendant expressed his intent to proceed to a bench trial. The Court held a trial confirmation hearing and set a briefing schedule and September 10, 2021 trial date. (Doc. No. 17). On July 14, 2021, the United States filed their trial

1 brief. (Doc. No. 18). On July 17, 2020, Defendant may payment of \$280.00 directly to the
2 Citation Violation Bureau. (Doc. No. 19).

3 Federal Rule of Criminal Procedure allows defendants in select misdemeanor cases to pay
4 a fine “*in lieu* of appearance.” Fed. R. Crim. P. 58(d) (emphasis added). This Court’s local rules
5 likewise provides the same while giving the Court the authority order a “higher payment” if the
6 citation was not timely paid. Local Rule 410(c) (E.D. CA 2019). A defendant is not
7 automatically entitled to pay the original forfeiture fee after entering an appearance, as it “would
8 essentially [] erase Defendant’s appearance and his not guilty plea.” *United States v. Martinez*,
9 No. 6:07 MJ 188 WMW, 2008 WL 2693187, at *6 (E.D. Cal. July 1, 2008). When Defendant
10 elected to enter an appearance and enter a not guilty plea rather than pay the forfeiture collateral
11 amount, he lost his right to unilaterally pay the fine. The Court thus continues to have jurisdiction
12 over this matter and considers the payment of \$280.00 as a deposit toward any fines to be
13 assessed in this matter.

14 Accordingly, it is hereby **ORDERED**:

15 Within **ten (10) days**, the Government shall notify the Court whether it should set this
16 matter for a further hearing; or, whether it recommends \$280.00 as the appropriate fine, in which
17 case the Court will adopt the Government’s recommendation and *sua sponte* close this case.
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19 Dated: July 23, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

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